

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

VINCENT H. VACCA,

Plaintiff,

v.

Civ. No. 15-1054 RB/GBW

STEVEN L. BELL,

Defendant.

**ORDER**


This matter is before the Court on Plaintiff's motion to excuse the initial partial payment ordered by the Court on December 9, 2015. *Doc. 7; see doc. 6.* Plaintiff contends that he is incarcerated, only makes thirty cents an hour, and has insufficient funds to pay the initial partial payment of \$50.95. *Doc. 7.*

On December 4, 2015, Plaintiff submitted an Inmate Trust Account statement, which indicated a balance of \$96.75 in Plaintiff's inmate account as of December 1, 2015. *Doc. 5.* Furthermore, the statement reflects that during the six-month time period immediately preceding the filing of his prisoner civil rights complaint (i.e., June through November 2015) the average monthly deposits in Plaintiff's inmate account was \$254.77. *Doc. 5.* Based on the foregoing, the Court ordered Plaintiff to make an initial partial payment of \$50.95. *See* 28 U.S.C. § 1915(b)(1)(A) ("The Court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial

partial filing fee of 20 percent of the greater of . . . the average monthly deposits in the prisoner's account"). *See doc. 6.*

There is no constitutional violation in requiring an inmate to choose between prison purchases and litigation. *See Shabazz v. Parsons*, 127 F.3d 1246, 1248-49 (10th Cir. 1997). "[W]hen a prisoner has the means to pay an initial partial filing fee and instead spends his money on amenities at the prison canteen or commissary, he should not be excused for failing to pay the initial partial filing fee." *Baker v. Suthers*, 9 F. App'x 947, 949 (10th Cir. 2001) (unpublished). As Plaintiff previously has been advised, the failure to comply with the Court's order or the statutory requirements of 28 U.S.C. § 1915 may result in the dismissal of Plaintiff's civil rights complaint without prejudice without further notice. *See id.*

IT IS THEREFORE ORDERED that Plaintiff's motion to excuse the initial partial payment [*Doc. 7*] is DENIED; and within thirty (30) days from the entry of this Order, Plaintiff must submit the previously ordered initial partial payment in the amount of \$50.95.



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GREGORY B. WORMUTH  
United States Magistrate Judge